Supreme Court, U.S.
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NO. 86-579

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

LINDA FEUERER,
Petitioner

vs.

ADAMAR OF NEW JERSEY, INC.,
Respondent

BRIEF OF RESPONDENT ADAMAR OF NEW JERSEY, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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COUNTERSTATEMENT OF THE CASE

This Brief is submitted by ADAMAR OF NEW JERSEY, INC. ("Adamar"), the Defendant in this personal injury action, in opposition to the Petition by the Plaintiff, LINDA FEUERER ("Feuerer"), for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit to review the Judgment Order denying Plaintiff's Petition for a panel rehearing with the Third Circuit, and affirming the final Order of the United States District Court for the Eastern District of Pennsylvania denying Plaintiff's Motion for a New Trial.

This case involves a personal injury action brought in the United States District Court for the Eastern District of Pennsylvania because of diversity of

citizenship, in which Feuerer sought damages from Adamar resulting from a fall in a public restroom on December 9, 1981.

A jury trial resulted in a verdict in favor of Feuerer in the amount of Fifty Thousand Dollars ($50,000.00). The verdict was molded to Thirty-seven Thousand Five Hundred Dollars ($37,500.00) because of the jury's determination that Feuerer was twenty-five percent (25%) responsible for the damages she sustained on December 9, 1981. The judgment was subsequently molded to account for pre-judgment interest.

Feuerer filed a Motion for a New Trial contending, inter alia, that the verdict was against the weight of the evidence; that the verdict was inadequate as a matter of law;

and that the lower court had erred in its charge to the jury.

On September 17, 1985, the District Court, citing Feuerer's desire for an "opportunity to convince another jury to take a more generous view of her claims," and the "serious questions concerning the credibility of the Plaintiff, her experts and her treating physicians," denied the Motion. The District Court further stated that the jury charge, which is the basis of the present Petition for Writ of Certiorari, when read "In context, that portion of the charge properly informed the jury that it had the right to determine the cause of plaintiff's injuries."

On September 30, 1985, Feuerer appealed to the Third Circuit from the District

Judge's Memorandum and Order denying her Motion for a New Trial. On June 11, 1986, the Third Circuit entered a Judgment Order, without memorandum or opinion, affirming the judgment of the District Court.

On June 25,1986, Feuerer filed a Petition for a Panel Rehearing with the Third Circuit. On July 9, 1986, the Third Circuit entered an Order, without opinion, denying the Petition for Rehearing.

Feuerer filed this Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit on October 7, 1986.

REASONS FOR NOT GRANTING THE WRIT

I. ABSENT A CONFLICT BETWEEN THE THIRD CIRCUIT'S RULING AFFIRMING THE DISTRICT COURT'S ORDER DENYING FEUERER'S MOTION FOR A NEW TRIAL AND THE DECISIONS OF THIS COURT, THE THIRD CIRCUIT, OTHER CIRCUITS AND THE HIGHEST COURT OF THE STATE OF NEW JERSEY, NO REASON EXISTS FOR THE GRANT OF CERTIORARI.

The Third Circuit did not overlook, misapply and/or disregard the decisions of the Supreme Court, other Circuit Courts and the highest Court of the State of New Jersey in affirming the District Judge's ruling on the propriety of the charge dealing with intervening negligence. The Third Circuit's decision is also not in direct conflict with its own well-established precedents.

The District Judge did not commit reversible error in instructing the jury on the issue of intervening negligence. Petitioners take a portion of the jury charge

completely out of context and argue that it was a misstatement of the law. As the District Judge stated in his Memorandum and Opinion of September 17, 1985,

> In context, that portion of the charge properly informed the jury that it had the right to determine the cause of Plaintiff's injuries. There was evidence from which the jury could infer that her injuries from the fall had been cured as of July, 1982. There was also evidence from which the jury could conclude that the chondromalacia was due to a congential malalignment of her knees for which she was operated on. Thus, these instructions were simply an extension of prior instructions that the Defendant should not be held liable for any injuries unless they proximately resulted from the fall in question.

The District Judge's charge was proper and not erroneous; therefore, the cases which Petitioner cites in her Petition, which state that where a lower court applies an incorrect legal standard, a new trial is mandatory, simply do not apply. It follows that the

claimed conflict does not and cannot exist. The Third Circuit did not disagree with the decisions of the United States Supreme Court, other circuit courts, the Third Circuit itself, and the New Jersey Supreme Court decisions which Petitioner cites, as these decisions are totally inapplicable.

II. THE ALLEGED PRESENT CONTROVERSY IS NOT OF SUFFICIENT MAGNITUDE AND IMPORTANCE TO WARRANT CONSIDERATION BY THE HIGHEST COURT IN THE UNITED STATES.

The United States District Court for the Eastern District of Pennsylvania and the Third Circuit Court of Appeals have fully considered and correctly decided the issues presented by this case. In fact, the Third Circuit affirmed the District Court's decision without opinion. The present case is a standard personal injury action, which is in Federal Court because of a diversity of

citizenship. There exist no conflict, no Federal question and no issue of sufficient magnitude and importance to warrant the attention of this Court.

The decision below turns on its own facts and will affect few others than the litigants. As a unanimous Supreme Court stated in Layne and Bowler Corp. v. Western Well Works, 261 U.S. 387, 393, 43 S.Ct. 422, 423, 67 L.Ed. 712 (1923):

> [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.

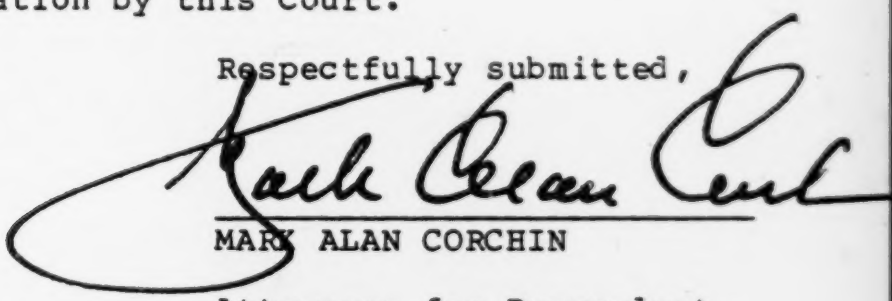
Given the workload of the Supreme Court and the lack of importance of the issues

which Petitioner presents, the Petition for Writ of Certiorari should be denied.

CONCLUSION

Respondent respectfully submits that Petitioner failed to establish any reason justifying the issuance of a Writ of Certiorari to the United States Court of Appeals for the Third Circuit. Specifically, Petitioner has failed to show that the Third Circuit is in conflict with this Court, other Circuit Courts, itself, or the New Jersey Supreme Court, or that the issues which Petitioner presents are of sufficient magnitude and importance to warrant consideration by this Court.

Respectfully submitted,



MARK ALAN CORCHIN

Attorneys for Respondent,
Adamar of New Jersey, Inc.

RULE 28.1 STATEMENT

Pursuant to Rule 28.1 of the Rules of the Supreme Court, Respondent makes the following statement disclosing parents, non-wholly owned subsidiaries and affiliates:

ADAMAR OF NEW JERSEY, INC.:

Ramada, Inc. (Parent corporation)